S.B. CIVIL WRIT PETITION NO.422/2004

Nand Lal vs. Ratan Lal & ors.

Date : 1.2.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. S.L. Jain, for the petitioner.

Mr. Pradeep Choudhary, for the respondents.

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Heard learned counsel for the parties.

The petitioner is aggrieved by the order dated 6.12.2003 by which the trial court dismissed the petitioner's application seeking permission to withdraw the compromise application which was submitted before the trial court and attested by the court on the dame day i.e. 28.10.2002.

The relevant facts are that four plaintiffs filed a suit for cancellation of sale deed dated 31.1.2002. The suit was filed against three defendants namely Nand Lal, Ratan Lal and Bhupendra Kumar. During the pendency of the suit, a compromise was submitted on 28.10.2002 by Nand Lal admitting the claim of the plaintiffs. The compromise was attested by the Court on 28.10.2002 itself. On 3.5.2003, the petitioner submitted an application stating therein that the petitioner did not submit compromise voluntarily as that compromise was got signed by exerting undue influence upon the petitioner.

The trial court after examining the facts of the case observed that the petitioner failed to prove that the agreement was not voluntarily signed or it was attested by the court against the free will of the petitioner. The trial court also observed that the compromise was signed by the petitioner and the petitioner was identified by his advocate and there is no allegation against the petitioner's advocate. The petitioner also submitted objection against the compromise after more than four months which appears to be an after thought.

According to learned counsel for the petitioner, since the petitioner was only one of the defendants, therefore, the trial court could not have recorded the compromise under the provisions of Rule 3 of Order 23 C.P.C. It is also submitted that the petitioner has right to withdraw the compromise as no decree has been passed as provided under Order 23 Rule 2 C.P.C.

Learned counsel for the petitioner in this regard relied on the judgment of the Apex Court delivered in the case of Smt. Rani Bai vs. Yadunandan Ram and another reported in A.I.R. 1969 S.C. Page 1118 wherein a suit which was filed by two plaintiffs was compromised by one of the plaintiffs and she gave up her all claims. The Hon'ble Apex Court observed that one of the plaintiff cannot settled the suit claim and the Court committed illegality in dismissing the suit assuming that when one of the persons interested along

with co-plaintiff admitted the claim of the other party and the party who had not signed the compromise, was the only heir of her husband.

Learned counsel for the petitioner further relies upon the judgment of Hon'ble Calcutta High Court delivered in the case of Gopika Raman Roy vs. Atal Singh and others reported in A.I.R. 1926 (Calcutta) page 193 wherein it has been held that the Court may in its discretion refuse to record the compromise if objected by one of the plaintiff or defendant.

I have considered the submission of learned counsel for the petitioner and perused the judgments cited above.

It is clear from Order 23 Rule 3 C.P.C. that the suit can be settled wholly or in part by lawful agreement or compromise. The suit can stand satisfied by the written compromise submitted by the plaintiff in respect of whole or part of the subject matter of the suit. Rule 3 further provides that the Court shall record the satisfaction of its own and the explanation of Rule 3 provides that an agreement or compromise which is void or voidable under the Indian Contract Act, 1872 shall not be deemed to be lawful within the meaning of this Rule. Further after recording the satisfaction about the agreement or compromise, the Court is required to pass a decree in accordance with

the compromise or settlement and it further provides that the said decree shall be relating to the parties to the suit and for the persons who are parties to the agreement or compromise or satisfaction. Therefore, Rule 3 of Order 23 C.P.C. requires for the Court to do two things. One is recording of satisfaction of the lawful agreement and thereafter to pass a decree. Since in this case, none of the party to the agreement raised objection at the time when the court recorded satisfaction, therefore, the compromise was recorded as attested.

It appears that the Court acted rightly in not passing any decree on the basis of any compromise because of the simple reason that no decree could have been passed by the trial court only on the basis of a compromise submitted by some of the party to the suit. Thereby, the trial court only followed the law as laid down by the Hon'ble Supreme Court in the case of Smt. Rani Bai (supra).

The recording of compromise and its attestation is a condition precedent for passing a decree and it is not necessary for the Court to pass the decree forthwith and particularly in a case where it is not possible to pass a decree on the basis of the compromise or settlement between some of the parties to the suit, then the Court is not only not required to pass the decree but the Court cannot pass the decree.

The Calcutta High Court in the case of Gopika Raman (supra) observed that the Court may in its discretion refused to record the compromise if it is objected by the parties. At the cost of repetition, it may be observed that at the time of recording of compromise, there was no objection, therefore, there is no illegality so far as the procedure adopted for recording satisfaction by the trial court is concerned.

The entire foundation of the writ petition is that the petitioner signed the compromise under pressure. The trial court considered the factual aspect and recorded the finding of fact that the petitioner failed to prove that there was any pressure upon the petitioner for filing the compromise. This finding of fact appears to be just and proper and suffers from no error as for arriving at this conclusion, the trial court has recorded the reasons after considering all the facts.

Learned counsel for the petitioner further submitted that the petitioner was not given opportunity to lead evidence to prove the facts as alleged by the petitioner in his application about undue influence exerted upon the petitioner.

In a case where the application is submitted which is not the regular proceeding as analogous to the

civil suit, then it is the duty of the party desirous to prove the fact by leading evidence to apply for the said permission of leading evidence. It is not necessary for the Court to hold a trial for deciding all applications which are filed by the parties in a suit.

Here in this case, the petitioner's application was posted for arguments without there being any objection of the petitioner and it was heard with the active participation of the petitioner. The petitioner did not even, at the time of the arguments before the trial court, submit that he wants to produce any evidence in support of his contention. The petitioner became wise after the Court decided against the petitioner.

In view of the above, the plea is not available to the petitioner and the petitioner, who persuaded the Court to move in a particular direction, cannot object that the Court has proceeded in such manner.

I do not find any illegality in the impugned order so as to interfere in the same under Article 227 of the Constitution of India.

Accordingly, this writ petition having no merit, is hereby dismissed.

Learned counsel for the petitioner then submitted

that the trial court is not permitting the petitioner to participate in the proceedings. No such order is available on the record, therefore, such contention cannot be entertained in the writ petition.

(PRAKASH TATIA), J.

S.Phophaliya